

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

SHELDON MORALES and
EDUARDO SANTANA

No. 19 CR 850

Judge Mary M. Rowland

GOVERNMENT'S RESPONSE TO
DEFENDANTS' SENTENCING MEMORANDA

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 18 CR 00835
)
ANEES USMANI,) Chicago, Illinois
) September 30, 2020
Defendant.) 3:00 p.m.

TRANSCRIPT OF PROCEEDINGS - Sentencing hearing
BEFORE THE HONORABLE EDMOND E. CHANG

APPEARANCES:

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1 THE COURT: All right. And then Mr. Pissetzky?

2 MR. PISSETZKY: Yes, Judge.

3 THE COURT: All right. On the criminal history
4 category, I don't think there was any objection there. And
5 the 2001 -- I'm sorry. Let's just go over the ones that
6 picked up points.

7 So possession of 15 grams or more of cocaine picked
8 up one point. The 2017 delivery of cocaine picked up one
9 point. And then two points are added because he was on
10 probation for the 2017 delivery at the time of this offense.
11 So that's four points. That's criminal history category III.
12 So the advice of the guidelines is 87 to 108 months.

13 Okay. Let's hear 3553 factors from the government
14 first.

15 MR. LAUD: Yes, your Honor. I suppose I need to
16 start by adjusting my recommendation in light of your Honor's
17 findings. And while I think a sentence within the previously
18 called-for guideline range would be the right sentence, I
19 think it would actually represent a substantial variance from
20 the advisory guidelines sentence your Honor has calculated.

21 So in light of that, I'm going to suggest that your
22 Honor impose a sentence of 120 months which is the sentence
23 that is recommended by the probation officer because I think,
24 you know, that would only be modestly above the guideline
25 range that your Honor has calculated. And I don't think I'm

1 in a position to ask for a substantially above-guidelines
2 sentence.

3 THE COURT: Yes, although the probation officer
4 recommendation was also in light of the --

5 MR. LAUD: No, I agree, your Honor. But I think on
6 the substance, we're going to be in a very similar place
7 because -- I'll talk about the offense more generally but, you
8 know, as to which drug trafficking counts as relevant conduct
9 and which does not, at the end of the day there's little doubt
10 that Mr. Usmani has been a very substantial drug dealer for a
11 very long period of time and importantly, a period of time
12 that was interrupted by a state arrest and conviction for an
13 offense as set forth in the PSR, dispatching drivers to make
14 retail cocaine deliveries, very, very similar to the offense
15 that he was convicted of here and which had no impact on his
16 behavior whatsoever. In fact, as set forth in the sentencing
17 memo and some of the excerpts and the wiretap calls is
18 essentially something that Mr. Usmani mocked.

19 This is a very serious offense. This is an offense
20 of exploitation. And Mr. Usmani exploited just about
21 everybody who crossed his path. The most obvious and most
22 significant are the addicts that he sold the drugs to. And
23 your Honor has commented before at sentencings on what a
24 staggering quantity of doses this amounts to. And that's
25 certainly true even of the more cabined drug quantity your

1 Honor found as relevant conduct. And it's certainly true
2 under 3553 when you look at the amount of drug dealing that
3 Mr. Usmani has admitted doing.

4 And I think it's fair for the 3553 factors to look
5 beyond the two-year, the two-year excerpt of 11 kilograms but
6 to look at the entire time period and to look at the fact that
7 Mr. Usmani also admitted that at times, he was selling
8 substantially more drugs than the rate that he was selling at
9 the time he was apprehended for this offense.

10 That represents a staggering quantity of harm to the
11 community. And it's over a very extended period of time,
12 which is aggravating. It's greatly aggravating because this
13 is not a mistake. This is not being the victim of
14 circumstances. This is not something that was done at a, you
15 know, particularly stressful time in Mr. Usmani's life or when
16 he was under particular external pressures.

17 This was done as a way of life to make money and to
18 live a lifestyle that Mr. Usmani was very proud of, whether
19 it's bragging about being the grandfather of drug dealing on a
20 wiretap call or, you know, sitting down -- and I absolutely
21 believe he should get credit for forthrightly acknowledging
22 his drug trafficking in the post-arrest interview, but for
23 laying that all out on the table; whether it's, you know,
24 driving, you know, the Mercedes G wagon, the flashy SUV, or
25 the Mercedes sedan that he bought for his girlfriend, Wesam

1 Fattah, one of the co-defendants in this case; the music
2 videos which were self-aggrandizing in which he, you know,
3 invested substantial proceeds.

4 It was a flashy lifestyle. It was a lifestyle that
5 Mr. Usmani wanted to live. And that's why he exploited those
6 drug addicts to whom he was selling drugs.

7 But it wasn't just the addicts. If you go one step
8 up the chain to the drivers, look at the people that
9 Mr. Usmani used. And I think "used" is the right word.
10 They're responsible for their own actions. They've pled
11 guilty. They received punishment from this court. They've
12 been sent to prison in many instances or deported from this
13 country, but they were used by Mr. Usmani. They were used to
14 be on the front lines to be the ones who are far more likely
15 to get arrested. I mean, this is an investigation that really
16 doesn't lead back to Mr. Usmani unless there is a sustained
17 long-term investigation. Otherwise, you just see one guy with
18 a relatively small quantity of cocaine making a delivery. So
19 that insulates Mr. Usmani. Many of the drivers were without
20 legal status, were not financially well off, were dependent on
21 him.

22 Mr. Usmani exploited, I think it's very clear,
23 Mr. Trotter, a man in poor health as your Honor acknowledged
24 who at times was homeless. And Mr. Usmani used him to run for
25 a very short period of time but used him to operate that drug

1 trafficking business right out of Mr. Usmani's condo.

2 He used his ex-wife and the mother of his child. He
3 had her package narcotics for him. He used Wesam Fattah
4 who -- you know, it's been a while since your Honor had her
5 before the Court but I'll just remind you was a woman who was
6 here without lawful status from Jordan. Clearly, I think from
7 her statements, they're credible, didn't have any, you know,
8 involvement in drug trafficking before getting to know
9 Mr. Usmani, and he used her to run his business. He used his
10 own brother, Nafees Usmani, who wound up being prosecuted in
11 this case, to run that business.

12 It was a business of exploitation. The proceeds
13 overwhelmingly flowed to Mr. Usmani. And, you know, we will
14 not ever be able to account for every penny, every dime, but I
15 think the government's version in the sentencing memo sets
16 forth where some of the money went, whether it's into
17 vehicles, into properties and, frankly, just in supporting a
18 lifestyle that -- you know, whether it's traveling to go to
19 the all-star weekend or going out to nightclubs, the money
20 gets spent, but the money was going to Mr. Usmani or to the
21 people that Mr. Usmani chose to support.

22 And I will acknowledge that he definitely chose to
23 support his ex-wife, his children, I think his immediate
24 family, his parents and his brother and to some extent as well
25 and, you know, so but it was -- there's no doubt about it, it

1 was Mr. Usmani's money to do with as he pleased.

2 It's not an offense that comes from an addiction to
3 drugs or from this very significant trauma that your Honor had
4 before you in the case of Mr. Sabih. It's a grown man,
5 frankly a middle-aged man who had every reason to know better
6 who's doing this for self-aggrandizing reasons. So it's a
7 very serious, very serious offense.

8 I want to spend a little bit of time just talking
9 about Mr. Usmani's history and characteristics. I think the
10 most significant thing is that that state drug case because
11 that should have been a wakeup call. I mean, he -- despite
12 being insulated from the consequences of his actions, he was
13 caught. He was prosecuted and, I mean, he came out of that
14 case very well. He came out of that case with probation and a
15 chance to, you know, put his life on the right track. And I
16 think he even came out of it sort of a little bit removed from
17 the lifestyle in that his phone with his customers in it, he
18 had lost control of. Mr. Cayuela had that.

19 So it wasn't a situation where he was like thrust
20 back immediately into the same lifestyle without, you know,
21 interruption, had no opportunity to reflect, no opportunity to
22 make another conscious choice. And the conscious choice he
23 made was to rebuild his empire. That's what he did.

24 And, I mean, there are references to this in the wire
25 affidavits but to customers where he's actually going back and

1 forth, and they're saying, "I can get it cheaper from Tony,"
2 and, you know, he's saying, "Don't mess with Tony, mess with
3 me." I mean, he's trying to win back those same customers.
4 He's trying to rebuild that business that was disrupted when
5 he was arrested by the State. That's a very deliberate course
6 of conduct that he engaged in.

7 He has, you know, other significant offenses, be it
8 the residential burglary or a prior cocaine conviction going
9 back to 2008. He was on probation, like actually under the
10 supervision of the court, while he was engaged in this
11 offense. So I think that is significant aggravation here.

12 Mr. Usmani is not a United States citizen. And so I
13 think he may be deported. As we've discussed at prior
14 sentencings, this is an aggravated felony. I don't know
15 exactly what the options are for Mr. Usmani who has lived here
16 for -- since high school essentially, so for a long period of
17 time where his family is here.

18 But I think, unlike some of the other cases where
19 your Honor viewed the risk of deportation as a significant
20 additional punishment that would warrant a reduction in
21 sentence, Mr. Usmani is not somebody who there's any reason to
22 believe would be victimized or attacked or any of the other
23 horrible consequences that potentially faced some of the other
24 defendants to come before your Honor for sentencing.

25 So I think that this is not a case where Mr. Usmani's

1 immigration, you know, situation really warrants a reduced
2 sentence. I mean, he has made his choices. He's made his
3 choice to engage in this conduct even though it could result
4 in him being deported. Other members of his family have
5 naturalized. He did not. And so this is the position he
6 finds himself in, but I don't think that is a significant
7 factor in mitigation.

8 And regarding the firearm, I thought carefully about
9 what your Honor just said. And I don't want to go against
10 your Honor's ruling, but I think that vignette, that back and
11 forth with the courier and then the very casual conversation
12 that followed five hours later with Mr. Cayuela, the fact that
13 a firearm was found in the home of a co-conspirator, even if
14 we are not holding Mr. Usmani responsible for that firearm for
15 the purposes of the sentencing guidelines highlights another
16 aspect of the seriousness of this offense which is that drug
17 trafficking on this scale always accompanies the potential for
18 violence.

19 I acknowledge in the sentencing memo and I want to
20 say it out loud again here today, apart from incidents of
21 domestic violence, Mr. Usmani did not use violence as part of
22 this offense, but the risk that comes around when you have
23 people moving large quantities of drugs, when you're dealing
24 with suppliers who move large quantities of drugs, when you're
25 storing large quantities of drugs, there is an attendant risk

1 to society that, you know, is part of why drug trafficking is
2 such a more serious crime than merely the possession of drugs
3 or the use of drugs. You know, that does carry significant
4 risk. And I respect your Honor's decision not to impose the
5 guideline enhancement, but I think that the presence of
6 firearms in this case isn't a factor that can be totally
7 ignored either.

8 So your Honor acknowledged, I think, in reaching the
9 drug quantity finding that this is a case where 3553(a)
10 factors could, you know, actually support a sentence in excess
11 of the advisory guideline range as calculated because so much
12 drug quantity, which I don't think there's any serious dispute
13 that the trafficking actually occurred. I mean, I don't hear
14 Mr. Usmani to be walking back his post-arrest statement.

15 For the reasons I articulated earlier, I think it's a
16 well-corroborated post-arrest statement in terms of whether
17 drug trafficking on the scale that he estimated occurred. And
18 I understand your Honor's ruling to be more focused on, can we
19 say it's sufficiently tied to this offense to count as
20 relevant conduct.

21 So in light of that, I think going up to a 120-month
22 sentence, which I believe would be the high end of the
23 advisory guideline range immediately above the one your Honor
24 just calculated -- and I'll consult my book again just to be
25 sure. But we were at -- I'm sorry. Yes, we are at 87 to 108,

1 so if we go just one level up, Level 28, to 97 to 121, you
2 know, a ten-year sentence, 120 months, would actually be
3 within a guideline range that's just one offense level higher
4 than the guideline range your Honor calculated. I think a
5 sentence of that -- of 120 months would be perfectly
6 appropriate here.

7 And frankly, I do think, your Honor, it's difficult
8 in light of Mr. Usmani's recidivism, in light of the fact that
9 he was the kingpin in this case, in light of the fact that he
10 bragged about that and engaged in that conduct after having
11 been caught before, I really believe, your Honor, that it
12 would not be appropriate to go below that. That really, I
13 think as always we're looking for a sentence sufficient but
14 not greater than necessary to meet the 3553(a) factors in this
15 case.

16 THE COURT: All right. Thank you. Just on
17 co-defendant disparity, so that would be doubled basically the
18 highest other sentence because Mr. Dominguez and Mr. Allen, it
19 looks like -- well, Mr. Allen it's a definite, everyone is
20 asking for 60 months at this point. And Mr. Dominguez,
21 there's some issue that has cropped up, but the government is
22 seeking the 60 months there.

23 So do you think the -- that doubling his is
24 appropriate?

25 MR. LAUD: Absolutely, your Honor. Those defendants

1 are, first of all, responsible under the guidelines but also,
2 there's not going to be 3553 aggravation evidence as to a
3 larger drug quantity presented as to those defendants. So
4 they're, first of all, responsible for a fraction of the drug
5 trafficking.

6 Second, each of those defendants operated, you know,
7 on their own or they may have had suppliers of their own, but
8 there's absolutely no evidence that they had workers or an
9 organization underneath them. Mr. Usmani had a very
10 significant organization underneath him involving, you know,
11 several drivers, sort of the frontline workers, as well as
12 additional people he roped in to perform specific tasks,
13 whether it's assisting with packaging or handing out the drugs
14 or handling the phones at various points in time.

15 And then, you know, the -- I mean, the -- I think
16 there will be evidence introduced as to Mr. Allen that he has
17 from time to time in his life returned to drug trafficking.
18 It is certainly not his first offense, but the evidence that
19 it was a way of life, I mean, Mr. Usmani freely admits that he
20 was deriving significant income. He was supporting his
21 family. He was making his music videos. He was buying flashy
22 cars. He was doing all of these things with the proceeds that
23 he amassed over a significant period of time with this as a
24 way of life.

25 And I think that when you factor all of those things

1 together, he's significantly more culpable than the other
2 defendants. I did not have qualms about asking for a
3 guideline sentence when the guidelines were higher on the
4 co-defendant disparity issue, and now that we're talking about
5 a 120-month sentence, I think that that step is not at all in
6 conflict with 3553(a)(6).

7 THE COURT: All right. Thank you.

8 Mr. Pissetzky?

9 MR. PISSETZKY: Maybe I should start where the
10 government finished. That five-year disparity in sentence is
11 almost unheard of but especially in this case where it's the
12 suppliers that the government agrees to a five-year sentence
13 but the person who was supplied with the drugs, they ask for
14 more.

15 Now, I have never heard the government say in the 20
16 years that I've practiced that the suppliers who were able to
17 get kilos of cocaine supposedly, these were their only
18 transactions and they have not done this before. I doubt if
19 it was Ron Allen's only customer. I doubt if Mr. Dominguez
20 only provided in his drug life career 916 grams to Mr. Usmani,
21 and that's it.

22 THE COURT: Yes, the question is whether there's
23 evidence, though, that would meet the preponderance standard
24 and is reliable of quantities beyond that. And here, there is
25 the post-arrest statement.

1 MR. PISSETZKY: And that's my next point.

2 Mr. Usmani was -- gave the government a statement,
3 post-arrest statement, and afterwards went in to cooperate and
4 sat down in an interview with the government and the agents
5 because he wanted to help the government, because he provided
6 them with information about other individuals, because he
7 answered all their questions. Yet he's getting no credit and
8 the government almost ignores the fact that not only he gave a
9 post-arrest statement but he wanted to cooperate and gave them
10 other information that they could have used or not used or
11 whatever it is that they want.

12 I don't understand to this day because I have not
13 been explained why the government agreed to sit down and
14 potentially have this cooperation meeting but later on never
15 provided us with the cooperation. I have not received an
16 answer to that, your Honor.

17 But Mr. Usmani sits here today able and willing to
18 continue to cooperate with the government which tells a lot
19 because you have to look at rehabilitation, recidivism, and
20 deterrence, specific deterrence. And I think --

21 THE COURT: Let me just -- do you want to put
22 anything on the record?

23 MR. LAUD: I do, your Honor. And I don't want to get
24 into anything that Mr. Usmani said in the proffer but I -- and
25 I don't have authority to do that either. I think it's fair

1 to say, though, the proffer letter was very clear and the
2 statements made leading up to the proffer were very clear as
3 they always are that just coming in for a proffer is not an
4 agreement to cooperate. So I think it is clear that the
5 government has not breached any agreement with Mr. Usmani if
6 that's the suggestion.

7 I respectfully disagree with Mr. Pissetzky's
8 statement that it wasn't explained to him why Mr. Usmani did
9 not get a cooperation reduction. It was explained to him both
10 by the attorneys assigned to this matter. He also came in and
11 met with the criminal chief in the office and pitched a
12 cooperation deal, and that was rejected and there was an
13 explanation that followed that.

14 THE COURT: All right.

15 MR. LAUD: And I just -- I don't believe that
16 Mr. Usmani based on that proffer put himself in a situation
17 where we could use him as a cooperator. I'm not asking that
18 the proffer be held against him. I'm asking that he do get
19 credit for having been forthright with the government in his
20 post-arrest statement, but the government is not making a 5K
21 motion here, and we're not making a 5K motion in good faith
22 just as we met with Mr. Usmani in good faith.

23 And so I don't see how that can be a reason to
24 essentially say that the government has taken advantage of
25 Mr. Usmani in some way by having him sit down for that

1 proffer.

2 MR. PISSETZKY: Your Honor, I did not say that the
3 government breached their agreement with Mr. Usmani, but
4 obviously Mr. Usmani didn't breach his agreement with the
5 government where he was supposed to be and was truthful with
6 the government and --

7 THE COURT: All right. But you are saying that
8 you've never been given an explanation. The government says
9 that you have. They're obviously trying to not put things on
10 the public record that might actually harm him. So I take
11 your point that he came in and he tried to cooperate. And I
12 will take that into account. So you can move on to the next
13 argument.

14 MR. PISSETZKY: And so when you look at avoiding
15 disparity in sentencing, such a disparity is not warranted in
16 this case. And we're asking for the five-year mandatory
17 minimum which is the same amount of time that the government
18 is asking for the suppliers in this case.

19 Now, as far as his criminal history, your Honor,
20 Mr. Usmani never did any prison sentence. So a five-year
21 prison sentence is going to be a very long prison sentence for
22 Mr. Usmani. He received -- like the government said and as
23 you see in the PSR, he received probation for his prior
24 charges and prior acts, and that is the reason why he was in
25 criminal history III, and that's the reason why he got -- he

1 received two more points when you calculated the criminal
2 history for being on probation when he committed this crime.

3 And so that has been taken into account already when
4 you calculate the criminal history. He is in criminal history
5 III. And when you look at his criminal history and you see
6 that he has not been in prison before and this is going to be
7 his prison sentence, a 60-month sentence is a very long
8 sentence. And that's what we're asking for.

9 Mr. Usmani, his parents -- he was born in
10 Afghanistan.

11 THE DEFENDANT: Yes.

12 MR. PISSETZKY: And when he was five, his parents
13 left to come to the United States but left him behind where he
14 was left with an aunt and uncle that were supposed to take
15 care of him but did not take care of him and, in fact, abused
16 him.

17 Once he arrived here in the United States around the
18 age of 10, not during high school but at the age of 10, he was
19 put in a scenario that he was -- he had to take care of his
20 siblings because his parents would be working all day long.
21 So from a very young age, he was abused and then put in a
22 scenario where he was supposed to become an adult at almost
23 the -- around the age of 10. Despite that, your Honor, he was
24 an honor roll student when he was in school. And you heard he
25 just received his GED now.

1 And he is a successful musician. And recently before
2 his arrest, in a way he became a You Tube sensation when he
3 came out with a song with a very well-known rapper, Twista.
4 So the potential for rehabilitation that Mr. Usmani has is
5 enormous.

6 He does have -- so when he married Lisa, Lisa had
7 three kids. And he basically took them and raised them as if
8 they were his own. And then they had two more biological
9 children. The turning point, unfortunately, for Mr. Usmani in
10 his life was when they lost their son shortly after he was
11 born. That's when his marriage to Lisa spiralled. That's
12 when he started drinking heavily, started using drugs like
13 marijuana and cocaine.

14 They eventually divorced at 2014 but at that point,
15 they had financial trouble. They didn't even have money to --
16 for the funeral of the burial for their young son that just
17 passed away. And it took a great toll on Mr. Usmani
18 psychologically, physically, and emotionally. And that's when
19 things started going downhill for him, unfortunately.

20 Now, when Mr. Usmani -- and the government is
21 describing the people that worked with Mr. Usmani as his
22 victims as well and that he exploited them. Look, they're all
23 adults. They were all adults that knew Mr. Usmani. It was
24 his brother. It was his ex-wife. It was his girlfriend.
25 They went into it with their eyes open. And they went into it

1 willingly and not being exploited. They're all adults that
2 made decisions. They all -- they're all adults that, as
3 Mr. Usmani was helping the family, they were working together,
4 unfortunately.

5 So it's -- he is not different than them and they are
6 not different than him in that perspective which also goes
7 into avoiding disparity in sentencing. When Mr. Usmani wasn't
8 in Chicago around the month of February of 2018, his brother
9 took over. His brother and Mr. Trotter took over the drug
10 dealing.

11 They had a choice. They didn't have to do that.
12 Mr. Usmani was never violent. Mr. Usmani was not violent
13 against them. Mr. Usmani did not have guns. Mr. Usmani did
14 not threaten them to do it. They did it. And so when you're
15 sentencing Mr. Usmani, you have to look at disparity in
16 sentencing as they are compared to these individuals as well.

17 As far as recidivism and rehabilitation and the
18 future for Mr. Usmani, your Honor, he did cooperate, as I told
19 you. He is working on changing his life. He has gotten his
20 GED. He has worked very hard at the MCC to better himself.
21 He has a very loving and supportive family that is still here,
22 and they're all in the courtroom.

23 And most importantly, despite being here since the
24 age of 10, Mr. Usmani will be deported. And I'm not sure
25 where the government gets their information, but he was born

1 in Afghanistan. He will be deported back to the country that
2 he was born in, despite the fact that his entire family is
3 going to stay here because they're citizens here. And when
4 they arrived here, they arrived here on a political refugee
5 asylum. So he will be sentenced and then deported to a place
6 where he does not know anybody, has no family. And his
7 family, in fact, escaped from there because they were
8 persecuted.

9 MR. LAUD: Your Honor, can I just ask for a point of
10 clarification? My understanding from the PSR and the
11 investigation is that Mr. Usmani is a citizen of Pakistan and
12 that he was born in Afghanistan but the Pakistani citizens, in
13 fact, a Pakistani diplomat, I believe, or somebody -- you
14 know, his father had some role in the government and that as a
15 result, he has Pakistani citizenship and that they later
16 traveled to Yugoslavia and to the United States.

17 So I am not aware of any indication that Mr. Usmani
18 would be -- has any claim to Afghani citizenship or would be
19 sent to Afghanistan. And if that is the case, I'd just like
20 to make sure that that's well developed for the record.

21 MR. PISSETZKY: So, your Honor, Mr. Usmani was born
22 in Afghanistan. He is -- was not a Pakistani citizen. His --
23 and currently, he is a green card holder that gets extended
24 every ten years because of his status as a political refugee.
25 However, at this point, he cannot become a United States

1 citizen. So by operation of law, he will be deported to the
2 country that he was born in, which is Afghanistan.

3 THE COURT: Well, he would be returned to the country
4 where he holds citizenship, and you're saying that he does not
5 hold Pakistani citizenship.

6 MR. PISSETZKY: Correct. That's based on the
7 information that I have. In fact, I don't think he -- at this
8 particular time, he doesn't have a passport or hold
9 citizenship anywhere in the world except for a visa or a green
10 card from the United States. And he has never visited --

11 THE DEFENDANT: Pakistan or Afghanistan.

12 MR. PISSETZKY: -- these countries in his life. He's
13 been here. So the sentence that -- whatever sentence you're
14 going to give him, your Honor, when he gets deported, he is
15 going to go to a completely foreign country where as we all
16 know, whether it's Pakistan or Afghanistan, the conditions in
17 either place are not ideal.

18 THE COURT: Yes. Well, he did live in Pakistan
19 before immigrating here.

20 THE DEFENDANT: When I was --

21 MR. PISSETZKY: When he was before ten -- between the
22 age of zero and ten.

23 THE COURT: Right.

24 MR. PISSETZKY: Yeah. So, I mean, he is a lot older
25 today, Judge.

1 THE COURT: Yes.

2 MR. PISSETZKY: All right. So the sentence is going
3 to be very, very harsh because this is his family. They're
4 all here, Judge.

5 Now, finally, I want to talk about his health and our
6 current situation, which is the COVID situation. And it's a
7 very scary situation. We're all sitting here in court at
8 least six feet apart. We all are wearing masks. There are
9 COVID-positive people, thousands of them, every day and just
10 recently in this courthouse, a couple days ago, I believe.

11 The CDC has -- if you go on the CDC website,
12 cdc.gov/coronavirus, there is a very handy chart that
13 indicates factors that increase community spread and
14 individual risks, COVID-19 associated hospitalization related
15 to underlying medical conditions. And it indicates that
16 crowded situations, as we know, increase the risk of
17 individual risk and hospitalization. Close physical contact
18 increases it. In close places increases it and duration of
19 exposure.

20 These are the normal -- these are the main four
21 factors. As you know, all these factors exist in a prison.
22 There's no way to avoid crowded situations, close physical
23 contact in close places and a very long duration of exposure
24 if your Honor is even going to sentence Mr. Usmani to a year.

25 Then the CDC says, risk for hospitalization if you

1 have any of these conditions and get COVID compared to people
2 without these conditions. And it lists the conditions that
3 increases the risk of COVID and hospitalization beyond the
4 first four that I provided you with. And hypertension, which
5 Mr. Usmani is suffering and is taking medication for,
6 increases the risk by three times. Obesity increases the risk
7 by three times. And diabetes, again which Mr. Usmani has,
8 increases the risk by three times.

9 So Mr. Usmani has three of these conditions that
10 further increases the risk by three times, but the CDC says
11 that if you have three or more of these conditions, your risk
12 is increased by five times at least of getting hospitalized or
13 being hospitalized due to COVID and possibly suffering severe
14 consequences from it; if not death, then very long-lasting
15 consequences. Mr. Usmani is obese. Mr. Usmani has
16 hypertension. And Mr. Usmani has diabetes.

17 Your Honor, I cannot ask you for to give him less
18 than five years because that's the mandatory minimum. Any
19 sentence -- and under 3553, you have to consider, one of the
20 things that you must consider is whether or not they'll be
21 able to sufficiently provide him with medical care and keep
22 him safe. The answer is no.

23 And so in addition to thinking about disparity in
24 sentencing, thinking about lack of recidivism here, the fact
25 that he cooperated, the fact that he did have a very traumatic

1 life and now will be deported which will continue to make his
2 life even more dramatic, you have to look at the medical
3 condition and the lack of safety that the Bureau of Prisons
4 will be able to provide for Mr. Usmani because we don't have a
5 vaccine. And prisons are dangerous.

6 And so, your Honor, I would ask you to sentence
7 Mr. Usmani to, unfortunately, the only -- the minimum that you
8 can, which is 60 months.

9 THE COURT: All right. Thank you.

10 Before we get to the allocution, let's talk about the
11 supervised release conditions. Even though deportation is
12 virtually guaranteed, there's a mandatory minimum, so we still
13 have to go through it.

14 MR. PISSETZKY: Unless you find that supervised
15 release will not be necessary.

16 THE COURT: I think because of the mandatory minimum,
17 I have to. This is one of those -- if there's no mandatory
18 minimum, I think I can say, yes, I'm not going to impose any
19 supervised release, but I think I have to because there's a
20 mandatory minimum.

21 MR. PISSETZKY: I'm not sure. I don't know. Maybe I
22 misread the way that the Seventh Circuit ruled on that --
23 those issues. But I thought that you can waive it if we think
24 that he will be deported. However, I don't have any
25 objections to these conditions because --

1 THE COURT: Okay. He's not going to serve them?

2 MR. PISSETZKY: Right.

3 THE COURT: Well --

4 MR. LAUD: Your Honor, what I propose then is we
5 could have a sort of bare bones set of conditions including, I
6 believe there's a special condition -- although he would
7 likely be deported directly from prison -- about, you know,
8 cooperating with any removal. And then, you know, I don't
9 know that we need to go through each and every condition. If
10 that --

11 THE COURT: Okay.

12 MR. LAUD: -- changes, I suppose we could always come
13 in and ask that his conditions of supervised release be
14 modified.

15 THE COURT: All right. Well, let me ask the
16 probation office, if there's a mandatory, statutory mandatory
17 minimum, I do have to impose a term of supervised release,
18 right?

19 PROBATION OFFICER FOWLIE: That would be my
20 understanding as well, your Honor.

21 THE COURT: Okay. So let's do this --

22 PROBATION OFFICER KIRIKLAKIS: Your Honor, Kathy
23 Kiriklakis, U.S. Probation. On Page 24 at Paragraph 103, 102
24 and 103, I list the statutory and the guidelines range for
25 supervised release. It is required in this case.

1 THE COURT: Yeah. I'm pretty sure I can't waive it.
2 However, given that deportation is basically guaranteed, let's
3 do this. On the mandatory conditions, Mr. Pissetzky, do you
4 have any objections to -- this is on Page 24.

5 MR. PISSETZKY: No.

6 THE COURT: 1 -- okay. 1, 2, 5, and 6.

7 MR. PISSETZKY: No objection.

8 THE COURT: All right. So those will be imposed.
9 And there is a prior cocaine use which justifies No. 6.

10 Then let's just go ahead and turn to Page 27. Is
11 there any objection to No. 21?

12 MR. PISSETZKY: No.

13 THE COURT: All right. So 21 will be imposed so that
14 the defendant will surrender to a duly authorized official of
15 the Homeland Security Department for a determination on the
16 issue of deportability by the appropriate authority in
17 accordance with the laws under the Immigration and Nationality
18 Act and the established implementing regulations. If ordered
19 deported, you shall not reenter the United States without
20 obtaining in advance the express written consent of the
21 Attorney General or the Secretary of the Department of
22 Homeland Security.

23 Okay. And then I think we can just hold off on
24 everything else.

25 PROBATION OFFICER KIRIKLAKIS: Your Honor, if I may,

1 again, Kathy Kiriklakis, U.S. Probation. We have had a few
2 instances where individuals were not automatically deported
3 and I believe were released on some sort of immigration bond.

4 If possible, could we please request discretionary
5 condition 15 that he shall report to the probation office just
6 in case for some reason Immigration does not automatically
7 report to him -- to deport him so we can know where he is.

8 THE COURT: Okay. All right. We'll add that one as
9 well. All right. Thank you.

10 PROBATION OFFICER KIRIKLAKIS: Thank you.

11 MR. LAUD: And, your Honor, just so the record is
12 clear, I think it is, if that were the case, the government
13 might file a motion to impose sort of additional conditions,
14 the ones necessarily attendant to supervision like, you know,
15 meeting with the probation officer, reporting contact with law
16 enforcement. And so I just want to make clear I'm not waiving
17 the idea that that those are needed if he's on supervised
18 release.

19 MR. PISSETZKY: That's understood, your Honor.

20 THE COURT: Yes, that's fine. If he makes bond then,
21 of course, I would expect a motion.

22 Okay. Mr. Usmani, now is your time to speak on your
23 own behalf. So you may go ahead and do that.

24 THE DEFENDANT: Your Honor, I have prepared a letter.

25 THE COURT: All right. Go ahead.

1 THE DEFENDANT: To the most Honorable Judge Edmond
2 Chang, thank you, your Honor, for granting me the time and
3 opportunity to show this Court how remorseful I am for my
4 actions which led us all here today before you.

5 With respect to this court, your Honor, I would like
6 to address my family and all who are present. Your Honor, I
7 stand before you guilty for my actions, guilty for my
8 decisions, and guilty for all my wrongdoings. I disregarded
9 sound advice from those I love and chose a path of
10 self-destruction, a path that I'm truly ashamed of today.

11 I cannot go back and turn back the hands of time, but
12 I can assure you that I will do my best to educate my children
13 and the youth in my community and prevent them to ever follow
14 the path I was on and persuade them to make lifestyle choices
15 for their betterment as individuals and to become productive
16 members of our society. At this point, all I can do is
17 respectfully hope that this Court will be satisfied with this
18 judgment in my case and know that without a shadow of a doubt
19 how truly sorry I am because I really am sorry, your Honor.

20 I'm sorry for not doing better in making poor life
21 choices. I was ignorant and arrogant. I involved my friends
22 and family. I involved the mothers of my children. It was
23 because of me and me alone that my whole family has gone
24 through a tremendous amount of pain and suffering. I caused
25 enormous embarrassment. And this weighs really heavy on my

1 soul. And I do not want to be known to my friends and family
2 as an outcast for all that I have done and indulged in. And I
3 look forward to the day I can redeem myself in my family's
4 name.

5 Your Honor, being incarcerated for the past 22 months
6 has not only saved my life from the drugs and alcohol, it has
7 also brought me closer to my god, Allah, and my religion. I
8 have fasted for the months of Ramadan and prayed five times a
9 day asking for forgiveness for my sins and my deeds.

10 While incarcerated I participated in programs such as
11 Parenting for Fathers, Total Body Fitness, and I completed my
12 GED, your Honor. I have also taken this time to reflect what
13 I want to accomplish in life. I have set my goals that I will
14 pursue by hard work and effort. I have taken personal
15 inventory of everything I will change in my life. Although
16 change does not come overnight, it is a slow process, and as
17 painful as it might be, it is very essential for my growth and
18 development into a new man, a pursuing man with dedication and
19 purpose, goal oriented and determined to be better, for I can
20 live a precise life and provide for my children.

21 Your Honor, I ask that you consider my future and
22 respectfully grant me the opportunity to show you better than
23 I can tell you what I intend to accomplish in my future. All
24 I need is for this Court to grant me the tools necessary to
25 reach my goals whether it be programs that fit my needs or

1 whatever this court deems appropriate for me to participate
2 in.

3 My future is in your hands, Judge Chang. Please
4 grant me leniency and give me a chance to do right by my
5 family and help me become a man of great integrity and honor.
6 Thank you, Judge.

7 THE COURT: All right. Thank you, Mr. Usmani.

8 MR. PISSETZKY: May I run to the restroom real quick?

9 THE COURT: Yes, you may.

10 (Pause.)

11 THE COURT: All right. We're back on the record.

12 Mr. Usmani, federal law tells judges what we have to
13 consider in picking a sentence. I do have to consider the
14 nature and circumstances of the crime that you committed. And
15 I consider your personal history and background.

16 Then I'm supposed to try to achieve certain goals of
17 sentencing and pick a sentence that is enough but not more
18 than necessary to achieve those goals. The goals include
19 providing for just punishment. The sentence must reflect the
20 seriousness of the crime. I have to try to promote respect
21 for the law. I also have to try to provide for something
22 that's called deterrence. And there are two forms of that
23 under the law: General deterrence, which is just sending a
24 message out generally to the public to not commit this kind of
25 crime; and then specific deterrence, which is giving a

1 sentence that is enough to specifically encourage you to not
2 commit any other crimes.

3 I have to consider the protection of the public. I
4 consider needs like rehabilitative, medical, vocational needs.
5 That can only ever push a sentence down, though. That can't
6 ever be a reason that a sentence gets higher.

7 I have to consider the advice of the sentencing
8 guidelines. I have to try to avoid unwarranted disparities.
9 And you've heard a little bit about that today. I ought to
10 treat you the same way I treat anyone else with the same kind
11 of personal history that you have and has committed the same
12 kind of crimes that you have committed. And it also means
13 that when sentencing you relative to the other defendants in
14 the case, I am trying to just slot everyone into the right
15 spot in terms of culpability and all the other relevant
16 factors. So those are all the goals and factors that I have
17 to consider in picking a sentence.

18 On the nature and circumstances of the crime, it is a
19 serious crime. What you're being held responsible under the
20 sentencing guidelines is for a little over two kilograms of
21 cocaine. And because each individual dose of cocaine is about
22 a tenth of a gram, that represents thousands and thousands of
23 individual doses.

24 And you just think about the extreme societal harms
25 that drug use has on our society at large, but you think about

1 it on the individual basis. That means thousands of times
2 that someone used this substance, this poisonous substance and
3 worked harms on their personal lives, on their professional
4 lives, and on the lives of their families. So this is why
5 drug dealing is just a very serious crime, and it's one that
6 we have been dealing with for decades and decades and probably
7 will be fighting for decades to come.

8 You also, I do believe that you did deal in much more
9 than just the two kilograms that I found you responsible for
10 under the guidelines. You did make this post-arrest
11 statement. There is a reason why we usually credit what's in
12 a post-arrest statement because you are speaking against your
13 very own interest, so you have every reason, if you're going
14 to make an admission against yourself, to speak truthfully
15 about that and to not exaggerate.

16 So in the most defendant-friendly, the most innocuous
17 interpretation of your post-arrest statement, from 2008 for
18 about ten years on and off, you sold on average four ounces of
19 cocaine a week. And, you know, as the probation officer had
20 proposed, if we just take one-fifth of that time, then you
21 sold in this time period something around 10 kilos, maybe 11
22 kilos of cocaine. That's not in addition to the 2.1. This is
23 a grand total.

24 And I do take that into account when I consider
25 things like your risk of repeat offense because you had been

1 doing this, on and off to be sure, but you had been doing this
2 on and off for over a decade by the time that you got caught.
3 And so this is part of your personal history, too, that you
4 were willing to sell this -- that quantity of drugs over that
5 quantity of time.

6 Now, having said that -- and this is kind of a sad
7 and tragic point to make these days, it just shows you the
8 extent of the drug crime in our country -- 10 or 11 kilos over
9 10 years is not the most prolific drug dealer actually. It's
10 one kilo a year basically which again as a grand total, it is
11 very serious. It is, sad to say, not very prolific when it
12 comes to federal court cases.

13 All right. Leaving the drug quantity, you are the
14 most culpable defendant in this particular case because you
15 are the organizer and leader of this drug business. It really
16 was a drug business. It's getting supplies of a good and then
17 selling that good and then delivering that good and then
18 picking up money for those deliveries. It was a drug
19 business, and you organized and you led it.

20 Mr. Pissetzky says, well, you should be on about an
21 equal level of culpability with the suppliers, but no.
22 Sometimes suppliers are sentenced to less time than those to
23 whom they sell because of various circumstances, and many of
24 them apply here. One is you did organize this drug business,
25 and so that is more damaging to society because you were able

1 to create this efficient operation of drug dealing.

2 Second is your criminal history. That does factor
3 into the -- your culpability here. And so there are a variety
4 of reasons, some of which I will talk about, in aggravation
5 where a drug seller may very well get more than their
6 supplier.

7 With regard to your co-defendants, I have now
8 sentenced ten of them with Mr. Allen and Mr. Dominguez coming
9 up. And the way I see you and your co-defendants, there are
10 basically two lower-level tiers of sellers and couriers and
11 also people who helped out just for a week or so. And so many
12 of those, the defendants in the lower-level tier got sentences
13 of a day or just a few months.

14 And then there's another tier that they were getting
15 about a one-and-a-half-year sentence. And then there is
16 Mr. Allen and Mr. Bowens and Mr. Dominguez, basically
17 suppliers. And then there's you at the top. And you are at
18 the top here.

19 Mr. Allen and Mr. -- well, Mr. Allen for sure,
20 essentially as certain as I can be, is heading for a 60-month
21 sentence because everyone is asking for that at this point.

22 Mr. Dominguez, it looks like he's going to try to ask
23 for under the 60 months but, you know, as far as I can
24 estimate, based on the 916 grams that he has sold, even if he
25 is safety valve eligible, he would most likely receive

1 something in that neighborhood.

2 And so I am keeping an eye out for the fact that what
3 the government has requested would be double the sentence of
4 anyone else in the case. And so I do take that into account
5 in mitigation, but please let there be no mistake that you are
6 the most culpable defendant in this case.

7 Mr. Pissetzky talks about the others who are involved
8 and that they were adults, they made their own decisions.
9 Here's the thing. Nafees Usmani, your brother; Steven Trotter
10 who was homeless and needed a place to stay and had very
11 serious health issues; Lisa Usmani; Wesam Fattah, yes, they're
12 adults and they make their own decisions. They would not have
13 committed a drug crime if you had not asked them.

14 And that's based on all four of those individuals. I
15 sentenced them. I've looked at their character and their
16 past. They would not have committed these crimes without you
17 asking them. So that is how you are more culpable in getting
18 them involved, despite the fact that, of course, they're
19 adults and they made adult decisions, and they paid a price
20 for it.

21 You did plead guilty to the crime. You have accepted
22 responsibility. Now, when I look at your personal history, it
23 does include your criminal history. It would be naive of me
24 to think that despite the rehabilitative steps that you've
25 taken -- and I do think that you should be praised for taking

1 those steps, earning the GED. Those are important steps to
2 take. But I do have to look at your criminal history too.
3 And it does include a prior conviction for possessing more
4 than 15 grams of cocaine. And it even includes a conviction
5 for delivery of cocaine for which you were on probation at the
6 time that you committed this offense. And I'm afraid that
7 that tells me that there is a very serious risk that you would
8 reoffend if I gave you too low of a sentence.

9 It's true, you haven't done any time in custody but
10 for many defendants, walking into that state court -- well,
11 getting arrested in the first place for drug dealing let alone
12 then being prosecuted and found guilty for it and getting a
13 sentence for it, even a noncustodial one, would be a shock to
14 their system and that would be the end of it but
15 unfortunately, that is not what happened with you.

16 Now, on your personal history, your upbringing was
17 obviously very difficult. There was an abusive -- you
18 suffered from an abusive environment, but I don't see a direct
19 connection between that upbringing and when you were over 40
20 years old and you committed this offense.

21 The written filing mentions another very serious
22 trauma in your life in losing your infant son. I -- and no
23 doubt, that is traumatic. The connection between that tragedy
24 and this offense, I again don't see very much of a connection
25 there. I don't think that's where you turned down -- you

1 started going downhill and started selling drugs. Tragically,
2 many families encounter that kind of tragedy without them
3 turning into a substantial drug dealer. So I don't think
4 that's particularly mitigating.

5 Now, you have contributed greatly to your family.
6 Obviously, many have written letters in support, and your
7 siblings, too, are still standing by you. So that's to your
8 credit that your family is still supportive. It speaks to the
9 fact that you were supporting them and provided both financial
10 and emotional support.

11 MR. PISSETZKY: Your Honor, I'm sorry to interject.
12 But Mr. Usmani lost his son around 2005. And that's where his
13 downward spiral started. And I do believe that it has a
14 direct connection because that's when he started using drugs,
15 abusing alcohol, and that's what led to him starting selling
16 drugs.

17 THE COURT: Well, I said that he said that he started
18 selling around 2007 or 2008. And, of course, it is a tragic
19 event, and no doubt he was affected by it. But as I said,
20 most people do not then turn into substantial drug dealers for
21 a decade based on a tragedy like that. So I do not believe
22 that there is a direct connection, and it is not mitigating in
23 light of the fact that people, most people do not turn into a
24 drug dealer based on that.

25 With regard to the family separation, that is also

1 the most difficult part of any sentencing. The fact that you
2 are separated from your daughter and your son, your
3 five-year-old son who has, you know, special needs, it was
4 heartbreaking to read the letters written by one of your
5 sisters and your daughter wrote a letter, and it was
6 heartbreaking to read them describe how your son has been
7 reacting and affected by your absence.

8 I believe your sister wrote about how sometimes he'll
9 wake up in the middle of the night just calling your name.
10 That is -- it is absolutely heart wrenching. And I take into
11 account that you are being separated from them. And of
12 course, you have a one-year-old, a very young son with your --
13 with Ms. Fattah. And so I take into account the family
14 separation.

15 It must be said, not to take away from your
16 contributions to your family and not to take away from how
17 hard it is going to be to be -- continue to be separated from
18 them, but it must be said that it is -- it's a product of your
19 choices that you made. And people who deal in this kind of
20 quantity of drugs, they have to realize that that means
21 there's going to be family separation which you've been
22 suffering through these last almost two years.

23 There is hope for rehabilitation. I think you did
24 well in school. You had this music career going. And I think
25 anyone who can organize -- use their intelligence and work

1 ethic to organize this drug business can use it for positive
2 things. So there is some rehabilitative hope, and I take that
3 into account.

4 The deportation is somewhat mitigating here. Assume
5 the worst and that you would be deported to Afghanistan then,
6 you know, obviously life is going to be very difficult over
7 there. You will be separated. It's not going to be easy to
8 travel, even for your family to travel there to visit you. So
9 I do take that into account.

10 It's not quite as mitigating, though, as some of your
11 co-defendants who for reasons that are under seal, although
12 you might know about them, are going to face really difficult
13 circumstances returning to their countries of origin, but I do
14 take it into account.

15 On general deterrence, I just want to -- I'll just
16 say a few words on this. Your lawyer argued in the written
17 filing that these social science, social scientists have
18 determined that there's more deterrence effect in terms of
19 sending a message out to the community if a punishment is
20 certain rather than lengthy. And I've read, you know, these
21 studies.

22 And I don't think, first of all, that these studies
23 establish that the length of a sentence has no general
24 deterrence effect. It's just comparatively these social
25 scientists believe that certainty has more of a deterrence

1 effect, not that there's zero deterrence effect in a lengthy
2 sentence.

3 And really, the social scientists, they're making an
4 argument not so much to judges I think, but the argument
5 applies more to policymakers, that if you put more money into
6 policing and increase the chances of detection, that will have
7 a better deterrent effect than just imposing long sentences.
8 So it's not really something that I think is persuasive to me
9 in picking individual sentences.

10 Also, these studies, it is really hard to study
11 general deterrence. The studies involve things like, well, if
12 we tell everyone who violates a condition of probation they
13 would definitely get two days in jail, then they study the
14 effects. I think it was in Hawaii. And it looked like it had
15 a better deterrent effect. That, that there was a certain two
16 days as opposed to an uncertain longer period of time, I don't
17 know what conclusions to draw from that. And so it's -- and
18 other studies rely on comparing juveniles who are like 16 or
19 17 and then people who are just young adults at 18 and the
20 differences in deterrence there because juveniles tend not to
21 get prison sentences.

22 Again, I don't know what inferences to draw from
23 that. So I really think the social scientists have not made
24 the case that general deterrence does not work. And when I
25 say "general deterrence," it's not because the *Tribune* or

1 *Sun-Times*, they're not here, of course, but it's just the
2 people who know you, you know, your community. Every
3 defendant, their family and their friends and so on, they know
4 what the sentence is. And so that is where you could have
5 general deterrence effect even if it's not a high-profile
6 case.

7 And lastly, I have no doubt that if it became known
8 that the federal judges in the Northern District of Illinois
9 were giving slaps on the wrist for drug crimes that drug
10 crimes would increase. So I do have to account for general
11 deterrence.

12 Lastly, your medical condition. I am concerned with
13 the fact that you have these risk factors for COVID risk. And
14 although I didn't see the obesity actually in the presentence
15 report, you know, just from your height and weight, I can
16 understand why Mr. Pissetzky maybe is making that argument.
17 So I do take into account the risks of COVID and its impact on
18 you.

19 Even more generally, I have been giving every
20 defendant basically a discount for the fact that we're in the
21 middle of a pandemic. And I do believe that the BOP is
22 getting better, as all society is or at least all society is
23 learning how to deal with the pandemic better and try to
24 control it including in the prison setting, but some of these
25 controls make prison harder now. Like, prison time is harder

1 now than -- during a pandemic than even if you don't catch
2 the -- you don't get infected. So I take that into account.
3 And then again, you specifically have more of these risk
4 factors.

5 I do have to reflect the seriousness of this crime,
6 though, that you committed, the fact that you organized and
7 led all of these other defendants and got some of them
8 involved and they otherwise would not have been involved. I
9 have to account for the recidivism risk and the need for
10 deterrence, both general and specific.

11 So based on that, I do believe the appropriate
12 sentence is a sentence of 96 months of imprisonment.

13 Supervised release will be the mandatory minimum of
14 four years with the conditions that we discussed previously.

15 I will not impose a fine. I don't have a lot of
16 information on the financial condition, but at least based on
17 the credit report and other public databases, it does not
18 appear like Mr. Usmani has the ability to pay a fine. I do
19 have to impose the \$100 special assessment.

20 If you are going to appeal the sentence, you must
21 appeal within 14 days of entry of judgment on the docket. If
22 you can't afford the fees or costs of appeal, then you just
23 ask to have them waived. And if you can show that you can't
24 pay them, then they'll be waived. If you can't afford an
25 attorney on appeal, you can ask to have one appointed free of